Remarks

Claims 1, 2, 4-6, 8-12, 14-19 and 21-23 are pending.

Response to Examiner's Response to Arguments

The Examiner provides a response to Applicants' previous arguments on pages 26-28 of the Office Action.

The Examiner states that the arguments with respect to Claim 6 have been considered "but are moot in view of the new ground(s) of rejection." Claim 6 is discussed, below, in connection with the rejections under Section 103(a).

As to Claims 1 and 11, the Examiner discusses the disclosure of U.S. Patent Application Publication No. 2002/0010652 (Deguchi) at paragraphs [0070]-[0071] and Figure 15 on pages 27 and 28 of the Office Action.

Previously, on pages 4, 5 and 12 of the Office Action, the Examiner admits that U.S. Patent No. 6,701,521 (McLlroy et al.) does not teach or suggest failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from such host system to a target system of Claim 1, and does not teach or suggest that a loader routine is adapted, after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from a host system to a target system of Claim 11.

Deguchi (Figures 1 and 15) provides (emphasis added):

> [0068] FIG. 15 illustrates a flowchart for illustrating vendor ID tracking system at server terminal of one embodiment. Referring to FIG. 15, at step 1510, server terminal 105 is configured to receive and store device IDs and the corresponding vendor ID. Thereafter, upon detection of user terminal connection at step 1520 and receiving bookmarked music clip information as well as the corresponding device ID, server terminal 105 may be configured to search its vendor ID database 864 to determine whether the received device ID corresponds to a stored vendor ID.
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> * * *
>
> [0070] Referring back to FIG. 15, if at step 1540 server terminal 105 does not find a matching vendor ID in vendor ID database 864 corresponding to the device ID, then at step 1580, server terminal 105 is configured to retrieve from playlist database 862 information corresponding to the bookmarked music clips and to transmit the retrieved information to user terminal 103. Thereafter

> at step 1590, server terminal 105 is configured to update user playlist database 863 to update stored information corresponding to the bookmarked music clips for the particular device user.
>
> [0071] In this manner, in accordance with the various embodiments of the present invention, device vendors may be preferably selected and displayed for purchase of bookmarked music clips who correspond to the actual vendors of the music marker devices. By tracking vendor information or ID corresponding to the music marker devices sold by the vendors, when the user of the music marker device decides to purchase the CD or the audio cassette for the bookmarked music clip, the user may be directed to the web site or contact information for the vendor from whom the user purchased the music marker device. Accordingly, preference may be given to device vendors who, in addition to selling CDs and audio cassettes of broadcast music, offer for sale the music marker devices which, the users may operate to bookmark broadcast music clips.

The initial burden[1] is on the Examiner to provide some reasonable suggestion of the desirability of doing what the inventors have done and claimed.

> To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

It is respectfully submitted that the Examiner has not met this burden of proof for at least four reasons.

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[1]

> The legal concept of prima facie obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process. *See In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976); *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972); *In re Saunders*, 444 F.2d 599, 170 USPQ 213 (CCPA 1971); *In re Tiffin*, 443 F.2d 394, 170 USPQ 88 (CCPA 1971), *amended*, 448 F.2d 791, 171 USPQ 294 (CCPA 1971); *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.
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> MPEP § 2142.

Deguchi (Figure 1) concerns "bookmarked music clips" of a "music marker device" (see electronic music marker device 101 that is connected to a user terminal 103 via a cradle type connection unit 102), and a server terminal 105 configured to retrieve from a playlist database 862 (Figure 8) information corresponding to the bookmarked music clips and to transmit the retrieved information to user terminal 103. That retrieved information appears to be where/how to purchase a music CD or audio cassette for the bookmarked music clip, such as a direction to a web site or other contact information. Hence, it is submitted that Deguchi, which concerns "bookmarked music clips" and music CDs or audio cassettes, does not deal with "programs", much less downloading a ***program*** associated with a received hardware identifier over a communication channel from a host system to a target system of Claim 1. It is respectfully submitted that the Examiner provides no convincing argument in this regard.

Second, as to the refined recitals of (a) receiving a hardware identifier and a vendor identifier at a host system, (b) storing a program associated with such hardware identifier at such host system, and (c) after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, such program associated with a received hardware identifier over a communication channel from a host system to a target system of Claim 1, it appears that the Examiner relies upon paragraphs [0070]-[0071] of Deguchi (emphasis added) ("if at step 1540 [of Figure 15] server terminal 105 does not find a matching vendor ID in vendor ID database 864 corresponding to the device ID, then at step 1580, server terminal 105 is configured to retrieve from playlist database 862 information corresponding to the bookmarked music clips and to transmit the retrieved information to user terminal 103."). The playlist database 862 of Deguchi stores playlists "for each registered radio station broadcasts periodically received from playlist provider 106" and includes "broadcast time field 1010, name of music clip field 1020, name of artist field 1030, and name of album field 1040 for storing broadcast information corresponding to music broadcasts from registered radio station having call number KROK" and "the number of music clip broadcast over a predetermined time period such as the number of same song broadcast within one day, the frequency information corresponding to the radio station broadcasting the music clips, and the Billboard chart ranking for each broadcast music album" and "information corresponding to the music broadcasts received from playlist provider 106 and the bookmarking information from each user's music marker device 101 via user terminal 103". Deguchi, paragraphs [0051], [0056], [0057] and [0059]. It is submitted that this clearly does not teach or suggest a

program associated with a received hardware identifier. Here, information corresponding to bookmarked music clips from playlist database 862, is not a ***program***. It is respectfully submitted that the Examiner provides no convincing argument in this regard.

Third, it is noted that the Examiner states, without support, on page 28 of the Office Action that "bookmarked music clips information" is equated with a "program associated with a received hardware identifier". Here, it is respectfully submitted that the Examiner has not presented any line of reasoning, much less the requisite convincing line of reasoning.

Fourth, the Examiner has not argued that an "ID corresponding to the music marker device" of Deguchi, is a hardware identifier representing the user terminal 103 of Deguchi, which the Examiner equates with the recited target system. To make this point clear, Claims 1 and 6 have been amended to include the recital "a hardware identifier representing said target system". See, for example, Claim 11. Clearly, server terminal 105 is connected to data network 104 for communicating with user terminals 103 of Deguchi for data transfer. See Deguchi, paragraph [0028]. Also, user terminal 103 is configured to connect to electronic music marker device 101 via cradle type connection unit 102, and is configured to receive, upon synchronization operation with music marker device 101, bookmark information stored in music marker device 101 of Deguchi. See Deguchi, paragraph [0027]. At best, there is an ID corresponding to the music marker device 101 of Deguchi, which is not a ***target system*** within the context of the claims. Hence, the "ID corresponding to the music marker device" of Deguchi is not a hardware identifier representing a ***target system***.

REJECTIONS UNDER 35 U.S.C. § 103(a)

The Examiner rejects Claims 1, 2, 4, 5, 8, 11, 12, 14-19 and 21-23 on the ground of being unpatentable over McLlroy et al. in view of Deguchi.

Claim 1, as amended, recites, *inter alia*, sending a hardware identifier representing a target system and a vendor identifier from the target system to the host system over a communication channel; and failing to find the received vendor identifier at the host system and downloading, responsive to such failing to find the received vendor identifier at the host system, the program associated with the received hardware identifier over the communication channel from the host system to the target system.

The Examiner admits (Office Action, pages 4 and 5) that McLlroy et al. does not teach or suggest failing to find a received vendor identifier at a host system.

As such, McLlroy et al. must also not teach or suggest failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from such host system to a target system.

Deguchi is discussed in detail under the Response to Examiner's Response to Arguments section, above. It is submitted that information corresponding to bookmarked music clips from playlist database 862, is not a ***program*** within the context of Claim 1.

Furthermore, Claim 1, as amended, recites "a hardware identifier representing said target system". It is submitted that the Examiner's reliance upon Deguchi is now clearly misplaced since an "ID corresponding to the music marker device" of Deguchi, is not a hardware identifier representing the user terminal 103 of Deguchi, which the Examiner equates with the recited target system. Clearly, server terminal 105 is connected to data network 104 for communicating with user terminals 103 of Deguchi for data transfer. See Deguchi, paragraph [0028]. Also, user terminal 103 is configured to connect to electronic music marker device 101 via cradle type connection unit 102, and is configured to receive, upon synchronization operation with music marker device 101, bookmark information stored in music marker device 101 of Deguchi. See Deguchi, paragraph [0027]. At best, there is an ID corresponding to the music marker device 101 of Deguchi, which is not a ***target system*** within the context of Claim 1. Hence, the "ID corresponding to the music marker device" of Deguchi is not a hardware identifier representing a ***target system***. Therefore, Deguchi does not teach or suggest failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host system, a ***program*** associated with a received hardware identifier (representing a ***target system***) over a communication channel from such host system to such target system.

The above points out specific distinctions believed to render Claim 1 patentable over the cited references.

Therefore, for the above reasons, Claim 1 patentably distinguishes over the references.

Claims 2, 4, 5, 8 and 23 depend from Claim 1 and patentably distinguish over the references for at least the same reasons.

Claim 2 recites employing as the plurality of programs a plurality of application programs. It is submitted that information corresponding to bookmarked music clips from playlist database 862 of Deguchi, is not a ***application program*** within the context

of Claim 2. Hence, Claim 2 further distinguishes over Deguchi as applied to the other references.

Claim 11 is an independent claim, which recites, *inter alia*, a target system including a hardware identifier representing the target system and a vendor identifier representing a vendor associated with the target system; and that a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from the host system to the target system.

The Examiner admits (Office Action, page 12) that McLlroy et al. does not teach or suggest failing to find a received vendor identifier at a host system.

As such, McLlroy et al. must also not teach or suggest that a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from a host system to a target system.

Deguchi is discussed in detail under the Response to Examiner's Response to Arguments section, above. It is submitted that information corresponding to bookmarked music clips from playlist database 862, is not a ***program*** within the context of Claim 11.

Furthermore, Claim 11 recites "a hardware identifier representing said target system". It is submitted that the Examiner's reliance upon Deguchi is now clearly misplaced since an "ID corresponding to the music marker device" of Deguchi, is not a hardware identifier representing the user terminal 103 of Deguchi, which the Examiner equates with a target system. Clearly, server terminal 105 is connected to data network 104 for communicating with user terminals 103 of Deguchi for data transfer. See Deguchi, paragraph [0028]. Also, user terminal 103 is configured to connect to electronic music marker device 101 via cradle type connection unit 102, and is configured to receive, upon synchronization operation with music marker device 101, bookmark information stored in music marker device 101 of Deguchi. See Deguchi, paragraph [0027]. At best, there is an ID corresponding to the music marker device 101 of Deguchi, which is not a ***target system*** within the context of Claim 11. Hence, the "ID corresponding to the music marker device" of Deguchi is not a hardware identifier representing a ***target system***. Therefore, Deguchi does not teach or suggest failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host

system, a ***program*** associated with a received hardware identifier (representing a ***target system***) over a communication channel from such host system to such target system.

The above points out specific distinctions believed to render Claim 11 patentable over the cited references.

Therefore, for the above reasons, Claim 11 patentably distinguishes over the references.

Claims 12, 14-19, 21 and 22 depend either directly or indirectly from Claim 11 and patentably distinguish over the references for at least the same reasons.

Claim 12 further distinguishes over Deguchi as applied to the other references for similar reasons as were discussed, above, in connection with Claim 2.

The Examiner rejects Claim 6 on the ground of being unpatentable over McLlroy et al. in view of U.S. Patent No. 6,496,979 (Chen et al.) and Deguchi.

Claim 6 is an independent claim, which, as amended, recites, *inter alia*, sending a hardware identifier representing a target system and a vendor identifier from the target system to a host system over the communication channel; and failing to find a file at a host system and downloading, responsive to such failing to find such file at such host system, a program associated with a received hardware identifier over a communication channel from such host system to a target system.

The Examiner admits (Office Action, pages 20 and 21) that McLlroy et al. does not teach or suggest storing a plurality of identifiers in a file at a host system, and failing to find such file at such host system.

As such, McLlroy et al. must also not teach or suggest failing to find a file at a host system and downloading, responsive to such failing to find such file at such host system, a program associated with a received hardware identifier over a communication channel from a host system to a target system.

It is submitted that Chen et al. adds nothing to McLlroy et al. regarding this refined recital. The Examiner apparently implicitly concedes this point at page 21 of the Office Action (in other words, the Examiner relies upon Chen et al. only for "storing said plurality of identifiers in a file at the host system") and relies upon Deguchi as is discussed below.

Deguchi is discussed in detail under the Response to Examiner's Response to Arguments section, above. It is submitted that information corresponding to bookmarked music clips from playlist database 862, is not a ***program*** within the context of Claim 6 (and is

not an "application that is associated with the particular hardware" as was stated by the Examiner on page 22 of the Office Action).

Furthermore, Claim 6, as amended, recites "a hardware identifier representing a target system". It is submitted that the Examiner's reliance upon Deguchi is now clearly misplaced since an "ID corresponding to the music marker device" of Deguchi, is not a hardware identifier representing the user terminal 103 of Deguchi, which the Examiner equates with a target system. Clearly, server terminal 105 is connected to data network 104 for communicating with user terminals 103 of Deguchi for data transfer. See Deguchi, paragraph [0028]. Also, user terminal 103 is configured to connect to electronic music marker device 101 via cradle type connection unit 102, and is configured to receive, upon synchronization operation with music marker device 101, bookmark information stored in music marker device 101 of Deguchi. See Deguchi, paragraph [0027]. At best, there is an ID corresponding to the music marker device 101 of Deguchi, which is not a ***target system*** within the context of Claim 6. Hence, the "ID corresponding to the music marker device" of Deguchi is not a hardware identifier representing a ***target system***. Therefore, Deguchi does not teach or suggest failing to find a file at a host system and downloading, responsive to such failing to find such file at such host system, a ***program*** associated with a received hardware identifier (representing a ***target system***) over a communication channel from such host system to such target system.

The above points out specific distinctions believed to render Claim 6 patentable over the cited references.

Therefore, for the above reasons, Claim 6 patentably distinguishes over the references.

The Examiner rejects Claim 9 on the ground of being unpatentable over McLlroy et al. in view of Deguchi and further in view of Chen et al. and U.S. Patent No. 6,151,643 (Cheng et al.).

Claim 9 depends from Claim 1 and patentably distinguishes over McLlroy et al. and Deguchi for at least the same reasons.

It is submitted that Chen et al. and/or Cheng et al. add nothing to McLlroy et al. and Deguchi to render Claim 1 unpatentable.

The Examiner rejects Claim 10 on the ground of being unpatentable over McLlroy et al. in view of Deguchi and further in view of Chen et al..

Claim 10 depends from Claim 1 and patentably distinguishes over the references for at least the same reasons.

Reconsideration and early allowance are requested.

Respectfully submitted,

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